

**IN THE HIGH COURT OF KARNATAKA,
CIRCUIT BENCH AT GULBARGA**

DATED THIS THE 24TH DAY OF JUNE, 2010

BEFORE

THE HON'BLE MR. JUSTICE B V PINTO

CRL.A. NO.1070 OF 2007

BETWEEN

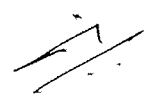
1. BALARAM,
S/O HANUMAPPA,
AGED 28 YEARS,
OCC. AGRICULTURE,
R/AT KADAGAMDODDI,
RAICHUR DISTRICT.

2. DEVENDRAPPA,
S/O ANJANEYA,
AGED 40 YEARS,
OCC. AGRICULTURE,
R/O KADAGAMDODDI,
RAICHUR DISTRICT.

3. MUNIYAPPA,
S/O ERANAGOUDA,
AGED 48 YEARS,
OCC. AGRICULTURE,
R/AT POTHGAL,
RAICHUR DISTRICT.

...APPELLANTS

(BY SRI MANVENDRA REDDY, ADV..)



AND

STATE OF KARNATAKA,
THROUGH SADAR BAZAR
POLICE STATION, RAICHUR,
REP. BY STATE PUBLIC
PROSECUTOR,
HIGH COURT BUILDINGS,
BANGALORE - 1.

...RESPONDENT

(BY SRI SHARANABASSAPPA K BABSHETTY, HCGP)

THIS CRL.A. IS FILED UNDER SECTION 374(2)
CR.P.C. AGAINST THE JUDGMENT DT. 29.6.2007
PASSED IN S.C. NO.25/2007 BY ADDL. S.J., F.T.C.-III,
RAICHUR.

THIS CRL.A. COMING ON FOR HEARING, THIS
DAY THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the appellants who are
convicted by the Fast Tract Court - III, Raichur, in SC
No.25/07 by judgment dated 29.6.2007 for offences
under Section 32 and 34 of Karnataka Excise Act and
sentenced to undergo imprisonment for six months and
to pay a fine of Rs.1,000/- for each of the offences.



2. The Sadar Bazar Police, Raichur, conducted a raid on credible information on 8.8.2006 near Shashimahal talkies and Government school in Raichur town and at the time of raid they observed that the appellants 1 to 3 were carrying clorohydrate powder in their possession. While being checked, it was found that appellant No.1 Balaram was in possession of 3 kgs of the said power. A2 Devendrappa and A3 Muniyappa were found in possession of 2 kgs of the said power. Hence they were detained and the material was seized. The said material was subjected to chemical examination and after getting the certificate from the chemical examiner chargesheet for offence under Section 32 and 34 of the Karnataka Excise Act and Sections 328 and 308 r/w Section 34 IPC was filed against the appellants. After committal of the case to the Court of sessions the appellants pleaded not guilty for the charge framed against them. Thereafter the prosecution in all examined 11 witnesses and got



marked Exs.P.1 to P.8 and produced MOs.1 to 3. The defence of the appellants was one of total denial. After hearing the prosecution and the defence the learned Fast Track Court was pleased to convict the appellants as herein before mentioned while acquitting them of the offence under Section 328 and 308 of IPC.

3. Being aggrieved by the said order of conviction and sentence this appeal has been filed.

4. In order to prove the case of the prosecution PW.1 Veeresh has been examined who has turned hostile to the case of the prosecution. So also PW.2 Anand, PW.4 Lakshamma, PW.5 Earesh, PW.6 Radhamma and PW.10 Mansoor have turned hostile to the case of the prosecution and have not supported the prosecution story. PW.3 is the police constable attached to Sadar Bazar police station. He has stated that on 8.8.2006 he has accompanied PW.4 and others



near Shashimahall talkies and they were watching movements of people. At that time these accused were coming by holding plastic bags in their hands. The said accused were caught by the police whereafter it was found that they were in possession of 3 kgs, 2 kgs and 2 kgs respectively of chlorhydrate powder. When questioned they informed that the said powder is for manufacture of toddy meant for human consumption. The accused were arrested and the property sent for chemical analysis after preparing the necessary panchanama. PW.7 is the head constable of the Sadar Bazar police station. He has corroborated the evidence of PW.3. PW.8 is the chemical examiner to whom the property was sent for examination. He has stated that the property seized from the possession of appellants contained chlorhydrate and that the said powder is unfit for human consumption. He has given certificate EX.P5. PW.9 is the Inspector of Police who has conducted the raid, arrested the appellants and seized



the material from them. PW.11 is the PSI who has conducted investigation after registration of the case on the basis of the panchanama and filed the chargesheet.

5. It is from these materials that the learned Sessions Judge has found the appellants guilty and has convicted them as aforesaid.

6. Heard Sri Manvendra Reddy, learned counsel for the appellant and Sri Sharanabassappa K Babshetty, learned High Court Government Pleader.

7. Learned advocate for the appellant submits that clorohydrate is not an intoxicant. It can only be used alongwith some other substance for the purpose of sale. He has relied on the decision of our High Court reported in ILR 1996 Kar. 1951. He further submits that the possession of articles by three different appellants cannot be clubbed together and therefore there is a



misjoinder of charges and further he submits that even if it is assumed that the material is unfit for human consumption as mentioned in EX.P.5 that will not amount to an offence much less under the Karnataka Excise Act. Hence he submits that the appellants may be acquitted of the offences charged against them.

8. Sri Sharanabassappa K Babshetty, learned HCGP submits that the prosecution has proved the case of possession of clorohydrate from the person of the accused. It is the use of the said material which would lead to intoxicants and therefore prima facie the appellants are proved to be convicted of the offence of possessing such articles and hence the conviction of the appellants need to be interfered with.

9. After hearing the parties it is seen that there are no independent witnesses examined regarding possession of the clorohydrate with the appellants.



Secondly, the certificate issued by PW.8 indicates that the samples of articles are unfit for human consumption. The certificate nowhere says that it contains intoxicant substance or any types of alcohol which is contrary to the provisions of Karnataka Excise Act. Therefore any article that is not fit for human consumption need not be an article prohibited under the Karnataka Excise Act. The ruling reported in ILR 1996 Kar 1951 amply illustrates that clorohydrate is not an intoxicant within the meaning of the provisions of the Karnataka Excise Act and therefore I am of the opinion that the prosecution has not proved beyond reasonable doubt that the appellants have committed violation of Section 32 or 34 of the Karnataka Excise Act. In that view of the matter, I hold that the appellants are entitled for an order of acquittal and accordingly the appeal is allowed. The order of conviction and consequent sentence imposed on the appellants is hereby set aside. Fine if any paid by the appellants is



directed to be refunded. Their bail bonds stand cancelled.

Sd/-
JUDGE

YKL/-